

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 22nd Floor
San Francisco, California 94105**

INITIAL STATEMENT OF REASONS

Date: April 25, 2002

RH02020999

**AMENDMENTS TO REGULATIONS CONCERNING RATE
HEARING PROCEDURES AND CASE SETTLEMENTS**

INTRODUCTION

Pursuant to Insurance Code section 1861.055 and §10089.11 (the “Statutes”), Insurance Commissioner Harry Low proposes to amend California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Articles 6, and 8, and Subchapter 4.9 as well as Title 10, California Code of Regulations, Chapter 5, Subchapter 7.7. The proposed amendments to regulations conform the regulations to the practice in rate hearings and bureau name changes within the Department of Insurance, reflect rule changes mandated by case law, make certain the timeframes for decision by the Commissioner and clarify requirements for settlement submissions. The Statutes require that the Commissioner adopt regulations to govern hearing procedure for rate changes for Proposition 103 lines of insurance, including earthquake insurance.

The Commissioner believes that the proposed regulation amendments are necessary to bring the regulations into conformity with case law, rate hearing practice, principles of fairness and bureau name changes within the Department of Insurance. Each change is identified and discussed below. The major thrust of the regulation changes, however, is to make it possible to undertake discovery and hear pre-trial motions but still commence a rate change hearing within 180 days if no continuance is granted.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION

The specific purpose of each amendment and the rationale for the Commissioner’s determination that each amendment is reasonably necessary to carry out the purpose for which it is proposed are set forth below. Overall, conforming the existing regulations to actual practice is reasonably necessary in order to carry out the intent of the Legislature that the regulations govern hearings (§1861.055) and specify procedures for ratemaking (§10089.11). Certain practices have been followed in rate hearings in place of those procedures set forth in the regulations because the procedures in the regulations do not work well. These improvised practices should be made part of the written regulations. The provision of this information is reasonably necessary for purposes of clarity and ease of reference.

§2642.2 subdivision (d) is modified to delete a subdivision that allows the Commissioner to give directions on a matter pending before an administrative law judge even when such direction has not been requested. This deletion is reasonably necessary in response to the reasoning in *Fireman's Fund Insurance Cos. v. Quackenbush* (1997) 52 Cal. App.4th 599, in which the court held that the Insurance Commissioner had exceeded his authority when he ordered an administrative law judge to reconsider an interim evidentiary ruling in a Proposition 103 rate reduction hearing.

§2648.4 subdivision (b) is modified to clarify that the Commissioner can request whatever documents are needed to perform a complete analysis of an application. This modification is reasonably necessary to enable the Commissioner to make a determination without going to hearing and engaging in lengthy discovery.

§§2651.1 subdivisions (a)(e) and (g), 2652.5, 2655.1 subdivision (g), 2659.1, and 2661.3 subdivisions (e) and (g) are modified to change "Administrative Law Bureau" to "Administrative Hearing Bureau." These changes are reasonably necessary to avoid confusion since there is no longer an Administrative Law Bureau in the Department of Insurance.

§2651.1 subdivisions (e) and (i) are modified to clarify that authorization by the administrative law judge is necessary before pleadings can be filed by facsimile or electronic transmission. These changes are reasonably necessary to aid litigants in ascertaining the rules for filing and to prevent facsimile transmission of large documents.

§ 2655.1 is subdivided differently for clarity. Subdivision (a) is clarified to begin discovery with the Notice of Hearing, allow alternatives to traditional discovery, and compress the timeframes between actions during the discovery phase of the case. New subdivision (b) is reworded for clarity and provides for a confidentiality agreement. New subdivision (c) also shortens the timeeframe for a meet and confer on a discovery dispute. New subdivision (e) explicitly affords the administrative law judge the ability to extend the shortened timeframes for discovery if necessary. These changes are reasonably necessary to speed the pre-adjudicative phase of the case so that the statutory timeframe for hearing commencement can be met.

§2655.6 subdivision (a) is modified to require submission of applicant's direct prepared testimony earlier and other parties' testimony later than the existing regulation. These changes are reasonably necessary to afford time for submission of and rulings on motions to strike the applicant's direct prior to the submission of other parties' testimony. Additionally, subdivision (a) is modified to require that an expert's prepared direct testimony be accompanied by the expert's curriculum vitae and list of publications. This change is reasonably necessary to eliminate the time spent in requesting and receiving these documents. Subdivision (b) is modified to shorten the time for filing a motion to strike. It is reasonably necessary so that the motion can be ruled upon before other parties' testimony is due. A new subdivision (c) is added to codify the practice that if rebuttal prepared testimony is allowed, motions to strike may be made orally and ruled upon from the bench. This procedure is reasonably necessary to ensure that the statutory

timeframe for commencement of the hearing is met. The ensuing subdivisions are relettered to follow (c).

§2655.5 subdivision (a) is modified to clarify that the administrative law judge can request additional evidence until the record is closed and that all parties must have an opportunity to see the additional evidence. It is reasonably necessary to extend the deadline for submission of additional evidence ordered by the ALJ because the record has often been augmented both before and after oral argument. A new subdivision (c) is added to provide the parties with an opportunity to object to the ALJ-ordered evidence. This addition is reasonably necessary to allow the parties to protect their record. Relettered subdivision (d) eliminates the need for a written motion showing good cause before an ALJ can order additional evidence after the close of the evidentiary hearing. In other words, the ALJ can order additional evidence on her own motion, but additional evidence cannot just be produced by the parties. This change is reasonably necessary to clarify that only the ALJ has the ability to bring evidence into the record after the evidentiary hearing. Relettered subdivision (e) is modified so that the record closes 15 days after oral argument, rather than 15 days after reply briefs. This change is reasonably necessary to afford sufficient time for scheduling oral argument and preparing questions therefor, the admission of additional evidence by the ALJ, and rulings on official notice.

§2655.10 is modified to require requests for official notice earlier in the process so that there is time to get objections and refutations before oral argument. This change is reasonably necessary to afford sufficient time for a party to refute, as provided for in the Administrative Procedure Act, and for the administrative law judge to consider the refutation before ruling.

§2656.1 subdivision (a) is modified by dividing it into two subdivisions. The new subdivision (b) is modified to provide for notice to interveners of any stipulation or settlement. This change is reasonably necessary to afford a meaningful opportunity to object to the settlement or stipulation. Current subdivision (b) is relettered to (c) and modified to require declarations in support of the stipulation or settlement if there is no admitted evidence in the record. This modification is reasonably necessary to ensure that the administrative law judge has the evidence in the record to make a decision regarding acceptance or rejection of a settlement. The ensuing subdivisions are relettered seriatim. Current subdivision (f) relettered to (g) is modified to clarify that both a stipulation and a settlement are subject to a hearing upon objection. These changes are reasonably necessary to protect the public interest. They ensure that interveners or potential interveners have notice and an opportunity to object to and have a hearing on dispositive stipulations as well as settlements.

§2656.2 is modified to eliminate subdivision (b) because the placement of the subdivision is confusing since the section concerns *rejection* of a stipulation or settlement but subdivision (b) concerns the *adoption* of a stipulation or settlement. Concurrently, §2656.3, concerning adoption of a settlement or stipulation is modified to have two subdivisions, its new subdivision (b) is the one eliminated from the previous section. These modifications are reasonably necessary for clarity and to prevent confusion.

§2656.4 subdivision (c) is modified in light of case law to delete the absolute prohibition on discovery or admissibility of information regarding approval of another insurer's application. This change is reasonably necessary in light of the holding in *RLI Insurance Co. Group v. Superior Court* (1996) 51 Cal.App.4th 415.

§2658.1 is modified so that it is clear that a proceeding is not submitted until all the argument and evidence is in and the ALJ has had a reasonable amount of time (15 days) to be sure that no additional evidence is needed. This change is reasonably necessary not only to allow for admission of evidence after oral argument, but also to clarify the deadline for the ALJ's decision. At present, Government Code §11517(c) allows the ALJ 30 days after submission to prepare a proposed decision, while Insurance Code § 1861.055(d) provides the ALJ shall render a decision 30 days after the closing of the record. The proposed change will clarify that submission and closing occur simultaneously.

§2659 is added to require the Commissioner to act on the proposed decision within 100 days, or the proposed decision is deemed adopted. The Commissioner also has the option of remanding for more evidence, or taking the evidence personally, and issuing a final decision after the augmentation of the record within an additional fixed timeframe. The change is reasonably necessary to assure that a final decision is issued in each case within a time certain.

A new Article is inserted, as Article 12, Judicial Review. A new §2660 is added to require service on the Administrative Hearing Bureau of any petition for review of the Commissioner's final decision and any final decision from a reviewing court. This change is reasonably necessary to ensure that the AHB is aware of later reversals of Commissioner decisions.

Current Article 12 is modified to Article 13 and current Article 13 is modified to Article 14. These changes are reasonably necessary in light of the insertion of a new Article 12.

§2697.3 concerns rate proceedings for the California Earthquake Authority. §2697.3 subdivision (d)(3) is modified to conform CEA's rate procedure to the changes set forth above regarding when a rate would be deemed approved. Rather than 100 days after the date the case is submitted, the rate would be deemed approved 100 days after the record is closed. This change is reasonably necessary to give the ALJ her full 30 days after all the argument and evidence is in and the Commissioner an additional 70 days to consider the proposed decision. This section's subdivision (f) makes explicit in the ratemaking context, Insurance Code §10089.11 subdivision (d)'s proprietary materials exception to public availability of documents. This change is reasonably necessary for clarity and consistency with the Insurance Code.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of these amendments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. Performance standards were considered but were rejected as an unreasonable and impracticable alternative because the enabling statute (Ins. Code §1861.055) requires regulations delineating procedures and timelines for scheduling and commencing hearings.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Although performance standards were considered as an alternative, they were rejected because these are required regulations that seek to detail specific procedures for conducting rate hearings.

PRENOTICE DISCUSSIONS

The Commissioner has conducted prenotice public discussions pursuant to Government Code Section 11346.45(a). This discussion was noticed January 18, 2002 and took place February 13, 2002. Representatives of the Department of Insurance, insurers, CEA and law firms were present. Additionally, consumer representatives submitted written comments, as did some other insurer representatives. The discussion and comments have been carefully considered in drafting the proposed amendments to the regulations.